

ALJ Proposed Rules (summarized)	Existing Rules and Regulations (summarized)	Differences / Notes
<p>Rule 3 Service and Filing of Documents</p> <p>Except as otherwise provided in this part, copies of all documents shall be served on all parties of record; should clearly designate <u>docket number</u>, name of party, and if a claimant last four digits of claimant's social security number. All documents shall be delivered or mailed to office of ALJ to whom proceeding is assigned for hearing. Each document shall be clear and legible.</p> <p>When an attorney or other person represents a party, service is made on attorney or other representative, unless presiding ALJ orders service upon party or by facsimile. Service of any document upon any party may be made by personal delivery or by mailing copy to last known address. Person serving document shall certify manner and date of service.</p> <p>Office of ALJ to whom proceeding has been assigned for hearing shall serve notices, orders, decisions and all other documents by regular mail to last known address.</p> <p>Documents, including proposed evidence, shall be filed in office of ALJ to whom proceeding has been assigned for hearing no later than five (5) days before date of scheduled hearing, absent a showing of good cause. Failure to comply with this requirement may result in a postponement of a hearing.</p> <p>Illegible documents of any sort will not be accepted.</p> <p><u>Efiling</u></p> <p>Filings by fax shall include cover sheet identifying sender, total number of pages transmitted, name of party, and last four digits of claimant's social security number, or docket number of case. <u>Identify source and date range</u> Documents filed by fax are presumed to be accurate reproductions of original document until proven otherwise. party proffering document shall retain original in event of a dispute over authenticity or accuracy of transmission. original document need not be submitted unless so ordered by presiding ALJ.</p>	<p>404.935 / 416.1435 http://www.ssa.gov/OP_Home/cfr20/404/404-0935.htm http://www.ssa.gov/OP_Home/cfr20/416/416-1435.htm</p> <p>If possible, evidence or a summary of evidence should be submitted to ALJ with request for hearing or within 10 days after filing request. Make every effort to ensure all material evidence is received by ALJ or is available at time and place set for hearing.</p> <p>404.950 (c) / 416.1450 (c) http://www.ssa.gov/OP_Home/cfr20/404/404-0950.htm http://www.ssa.gov/OP_Home/cfr20/416/416-1450.htm</p> <p>ALJ may receive evidence at hearing even though evidence would not be admissible in court under rules of evidence used by court.</p> <p>HALLEX 1-2-6-58 http://www.ssa.gov/OP_Home/hallex/I-02/I-2-6-58.html</p> <p>Written Evidence Submitted at Hearing</p> <p><u>The ALJ may admit additional written evidence into record during hearing.</u> Before admitting any proposed exhibit into record during hearing, ALJ will identify it and offer claimant opportunity to inspect make objections or comments.</p> <p>If ALJ plans to admit additional written evidence into record after hearing, or if claimant submits evidence after hearing, see HALLEX I-2-7-20, I-2-7-30, and I-2-7-35.</p> <p>E.Part 405- Closed Record Provision in Region 1</p> <p>In region 1, rules in Part 405 of regulations apply to submission of evidence. Under 20 CFR 405.331, claimant must submit any written evidence no later than 5 business days before date of scheduled hearing. An ALJ gives claimant notice of this requirement in notice of hearing. Filing within the 5 days requires showing of good cause, which includes having been misled by agency; claimant has physical, mental, educational, or linguistic limitation(s) that prevented him or her from submitting evidence earlier; other unusual, unexpected, or unavoidable circumstances beyond claimant's control prevented submitting evidence earlier.</p>	<p>-AALJ is proposing docket numbers to identify documents</p> <p>-AALJ is proposing that all documents must be in five days prior to hearing or else hearing will be postponed. Current regulations ask that <i>if possible</i> documents and evidence <i>should be</i> submitted with request for hearing of within 10 days of filing request.</p> <p>-Existing rules state that ALJ will allow new evidence at hearing.</p> <p>-There is an exception in OCAJ Region I, where claimant must submit any written evidence five days prior to hearing. ALJ will not review evidence unless there is good cause for late filing.</p> <p>-AALJ proposed rules contemplates closed record; inconsistent with current rules and regulations.</p>

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	<p>If claimant wants to submit evidence after hearing but before hearing decision is issued, ALJ will not consider evidence unless claimant shows that there is a reasonable possibility that evidence, alone or when considered with other evidence of record, affects outcome of case and same good cause as for within 5 days prior to hearing.</p> <p>If claimant submits evidence after hearing decision is issued, ALJ will forward information to Appeals Council if a request for review of ALJ's decision was submitted. If claimant has not requested AC review, ALJ may either consider revising his or her decision if claimant shows a reasonable possibility that evidence, alone or when considered with other evidence of record, affects outcome of case (and was not submitted earlier for one of reasons previously noted); or return evidence to claimant noting in writing that record is closed but that claimant may request review from AC.</p>	
<p>Rule 4 Time computations.</p> <p>Time begins with day following act, event, or default, and includes last day of period, unless Saturday, Sunday or legal holiday observed by Federal Government, then time period includes next business day. When period is 7 days or less, intermediate Saturdays, Sundays, and holidays are excluded.</p> <p>Date of entry of an order is date order is mailed or otherwise served by Office of Hearings and Appeals [now ODAR].</p> <p>Documents are not deemed filed until received by assigned ALJ. Service is deemed effected at time of mailing. When party has right or is required to take an action within a prescribed period after service of a document and document is served by mail, add 5 days.</p> <p>Filing by facsimile (fax) is effective upon receipt of entire document by receiving facsimile machine. For purposes of filings by facsimile time printed on transmission by facsimile equipment constitutes date, except as prescribed by rule 3 (f) (5).</p>		

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<p>Rule 20 Designation of Presiding ALJ</p> <p>Hearings are held before an ALJ appointed and assigned to Office of Hearings and Appeals [now ODAR], Social Security Administration. The <u>presiding judge are designated by Associate Commissioner for Hearings and Appeals [now ODAR, probably Chief ALJ]</u>.</p>	<p>I-2-1-55.Assignment of Service Area Cases to ALJs http://www.ssa.gov/OP_Home/hallex/I-02/I-2-1-55.html</p> <p>When HO receives valid request for hearing (RFH) or an Appeals Council (AC) remand and completes procedures set forth in Hearings, Appeals and Litigation Law (HALLEX) manual chapter I-2-0, Hearing Office Chief ALJ (HOCALJ), acting as Deputy Commissioner's "delegate," will assign case to an ALJ (ALJ).</p> <p>HOCALJ generally assigns cases on rotational basis, oldest first, unless there is a special situation. See HALLEX I-2-1-55 D below.</p> <p>The Regional Chief ALJ (RCALJ) determines which areas within an HO's service area are to be served from HO and which are to be served from remote hearing site(s), taking into consideration recommendations from HOCALJ. May modify based on case receipts and other service and cost factors.</p> <p>Generally, HOCALJ will rotate assignments requiring travel among all ALJs in HO consistent with objective of scheduling older cases first.</p> <p>ALJs generally accumulate a docket of cases to be heard at remote site to minimize administrative travel and related costs. If a remote site has video teleconferencing (VTC) availability, ALJs are encouraged to hold hearings by VTC.</p> <p>ALJ must obtain advance administrative approval of proposed travel.</p> <p>ALJ will raise any objections to a travel docket with his or her HOCALJ.</p>	<p>-In proposed rules Associate Commissioner for Hearings and Appeals will designate presiding judge whereas Hearing Office Chief ALJ will assign cases to ALJs.</p>
<p>Rule 21 Time and Place for Hearing</p> <p><u>ALJ sets time and place for hearing, judge may change time and place, if it is necessary.</u> After sending parties reasonable notice of proposed action, ALJ may adjourn or postpone hearing or reopen it to receive additional evidence any time before judge notifies parties of a hearing decision</p> <p>If a party objects to time or place of hearing, party must notify ALJ at as soon as possible before the hearing. Party must state reason for their objection and state time and place they want hearing to be held. If at all possible, request should be in writing. ALJ will change</p>	<p>HALLEX 1-2-3-10 http://www.ssa.gov/OP_Home/hallex/I-02/I-2-3-10.html</p> <p>ALJ (ALJ) sets time and place for hearing. ALJ may change time and place, if necessary. Objective is to hold a hearing as soon as possible after request for hearing (RH) is filed, at a site convenient to claimant. Hearing office (HO) staff will generally contact hearing participants to ascertain availability before scheduling hearing.</p> <p>NOTE:</p> <p>If a claimant threatens violence against general public or HO personnel, or has been banned from entering a Federal or Social Security facility, see instructions for scheduling a hearing in 20 CFR 404.937 and 416.1437 and in Chapter I-1-9-0 of Hearings, Appeals and Litigation Law (HALLEX)</p>	<p>-Proposed rules and existing rules and regulations are very similar and are often verbatim.</p>

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<p>time or place of hearing if party has good cause.</p> <p>ALJ will find good cause for changing time or place of scheduled hearing, and will reschedule hearing if a party's reason is one of following circumstances and is supported by evidence:</p> <p>(1) party of their representative are unable to attend or to travel to scheduled hearing because of a serious physical or mental condition, incapacitating injury, or death in family; or</p> <p>(2) Severe weather conditions make it impossible to travel to hearing.</p> <p>Determining whether good cause exists in other circumstances. ALJ will consider a party's reason for requesting change, facts supporting it, and impact of proposed change on efficient administration hearing process. Factors affecting impact of change include, effect on processing of other scheduled hearings, delays in rescheduling hearing, and any prior changes were granted to party. Examples of such other circumstances, a party might give for requesting a change in time or place of hearing, include:</p> <p>(1) party has attempted to obtain a representative but needs additional time;</p> <p>(2) party's representative was appointed within 30 days of scheduled hearing and needs additional time to prepare for hearing;</p> <p>(3) party's representative has a prior commitment to be in court or at another administrative hearing on date scheduled for hearing;</p> <p>(4) witness who will testify to facts material to case would be unavailable to attend scheduled hearing and evidence cannot be otherwise obtained;</p> <p>(5) Transportation is not readily available for a party to travel to hearing;</p> <p>(6) party lives closer to another hearing site; or</p> <p>(7) party is unrepresented, and is unable to respond to</p>	<p>manual.</p> <p>A. Determining Time and Place for Hearing</p> <p>When an ALJ sets time and place for a hearing, ALJ will consider:</p> <p>The number and types of cases to be set for hearing,</p> <p>The proximity of hearing site to claimant's residence, and</p> <p>The availability of claimant, representative, and witnesses on proposed hearing date.</p> <p>To extent possible, location of hearing site will be within 75 miles of claimant's residence. ALJ will also consider scheduling hearing by video teleconferencing (VTC) or, in certain extraordinary circumstances, by telephone.</p> <p>404.936 / 416.1436</p> <p>http://www.socialsecurity.gov/OP_Home/cfr20/416/416-1436.htm</p> <p>We may set time and place for any hearing. We may change time and place, if it is necessary. After sending you reasonable notice of proposed action, ALJ may adjourn or postpone hearing or reopen it to receive additional evidence any time before he or she notifies you of a hearing decision.</p> <p>We hold hearings in 50 States, District of Columbia, and Northern Mariana Islands. "place" of hearing is hearing office or other site(s) at which you and any other parties to hearing are located when you make your appearance(s) before ALJ, whether in person or by video teleconferencing.</p> <p>If you object to time or place of your hearing, you must notify as soon as possible before the hearing. You must state reason for your objection and time and place you want hearing to be held. If at all possible, request should be in writing. We will change time or place of hearing if ALJ finds you have good cause.</p> <p>If you have been scheduled to appear for your hearing by video teleconferencing and you notify us that you object to appearing in that way, ALJ will find your wish not to appear by video teleconferencing to be a good reason for changing time or place of your scheduled hearing and reschedule your hearing for a time and place at which you make your appearance in person. ALJ will also find good cause for changing time or place of your scheduled hearing, and reschedule your hearing if your reason is one of following circumstances and is supported by evidence:</p>	

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<p>notice of hearing because of any physical, mental, educational, or linguistic limitations (including any lack of facility with English language)</p>	<p>(1) You or your representative are unable to attend or to travel to scheduled hearing because of a serious physical or mental condition, incapacitating injury, or death in family; or</p> <p>(2) Severe weather conditions make it impossible to travel to hearing.</p> <p>In determining whether good cause exists in other circumstances ALJ will consider your reason for requesting change, facts supporting it, and impact of proposed change on efficient hearing process. Factors affecting impact of change include, effect on processing of other scheduled hearings, delays which might occur in rescheduling your hearing, and whether any prior changes were granted to you. Examples of such other circumstances, which you might give for requesting a change in time or place of hearing, include,</p> <p>(1) You have attempted to obtain a representative but need additional time;</p> <p>(2) Your representative was appointed within 30 days of scheduled hearing and needs additional time to prepare for hearing;</p> <p>(3) Your representative has a prior commitment to be in court or at another administrative hearing on date scheduled for hearing;</p> <p>(4) A witness who will testify to facts material to your case would be unavailable to attend scheduled hearing and evidence cannot be otherwise obtained;</p> <p>(5) Transportation is not readily available for you to travel to hearing;</p> <p>(6) You live closer to another hearing site; or</p> <p>(7) You are unrepresented, and you are unable to respond to notice of hearing because of any physical, mental, educational, or linguistic limitations (including any lack of facility with English language) which you may have.</p>	
<p>Rule 22 Notice of Hearing</p> <p>After ALJ sets time and place of hearing, notice of hearing will be mailed to parties at their last known addresses, or given by personal service. Notice will be mailed or served at least 20 days before hearing. Notice of hearing will contain statement of specific issues to be decided and tell parties that they may designate a person to represent them during proceedings. Notice will also contain an explanation of procedures for requesting a change in time or place of</p>	<p>HALLEX 1-2-3-15 http://www.ssa.gov/OP_Home/hallex/I-02/I-2-3-15.html</p> <p>ALJ or hearing office (HO) staff must send notice of hearing to claimant and representative at least 20 days before hearing, unless claimant has waived right to advance notice. HO staff will also add a copy of notice of hearing to claim(s) file.</p> <p>• HALLEX 1-2-3-20 http://www.ssa.gov/OP_Home/hallex/I-02/I-2-3-20.html</p> <p>• Acknowledgment Form</p> <p>With each notice of hearing, hearing office (HO) staff will send a Form HA-</p>	<p>-Both will mail notice of hearing 20 days prior to hearing.</p> <p>-Proposed rules do not specify what information will be included with notice unlike detailed information existing rules and regulations currently provides.</p> <p>-if claimant does not respond</p>

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<p>hearing, a reminder that if a party does not appear at their scheduled hearing without good cause ALJ may dismiss their hearing request, and other information about scheduling and conduct of hearing. If a party or their representative does not acknowledge receipt of notice of hearing, we will attempt to contact party for an explanation. If party tells us that they did not receive notice of hearing, an amended notice will be sent to party by mail.</p>	<p>504 (Acknowledgment of Notice of Hearing) or Spanish version, HA-504-SP, to claimant and representative, if any.</p> <p>Acknowledgment Form Not Returned</p> <p>If acknowledgment form is not returned within 7 days, send a written Reminder to Return Acknowledgment Form, or <u>telephone claimant or representative, if any, to ask whether he or she plans to attend hearing.</u></p> <p>405.316</p> <p>http://www.ssa.gov/OP_Home/cfr20/405/405-0316.htm</p> <p>After ALJ sets time and place of hearing, mail notice of hearing at last known address, or give notice by personal service. Mail or serve notice at least 75 days before date of hearing, unless there is agreement to a shorter notice period.</p> <p><u>notice of hearing will tell you:</u></p> <p>(1) <u>specific issues to be decided,</u></p> <p>(2) <u>That you may designate a person to represent you during proceedings,</u></p> <p>(3) <u>How to request that we change time or place of your hearing,</u></p> <p>(4) <u>That your hearing request may be dismissed if you fail to appear at your scheduled hearing without good reason under § 405.20,</u></p> <p>(5) <u>Whether your or a witness's appearance will be by video teleconferencing, and</u></p> <p>(6) <u>That you must submit all evidence that you wish to have considered at hearing no later than five business days before date of scheduled hearing, unless you show that your circumstances meet conditions described in § 405.331 for missing deadline.</u></p> <p>In notice of hearing, return a form to inform of received notice. If receipt is not acknowledged of notice of hearing, attempt will be made to contact to see if it was received. If not received, an amended notice by certified mail will be sent.</p>	<p>within 7 days existing rules/regulations will telephone asking claimant if they will attend hearing. Proposed rules will attempt to contact party for an explanation as to why they have not responded.</p>
<p>Rule 23 Legal assistance</p> <p>The Office of Hearings and Appeals [now ODAR] does not have authority to appoint counsel, nor does it refer</p>	<p>HALLEX I-2-6-52</p> <p>http://www.ssa.gov/OP_Home/hallex/I-02/I-2-6-52.html</p>	<p>-Proposed rules say they do not have authority to appoint counsel or representatives, but does not mention if they will make sure claimants are</p>

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<p>parties to individual attorneys or representatives.</p>	<p>If claimant is unrepresented, ALJ will ensure on record claimant has been properly advised of right to representation and claimant is capable of making an informed choice about representation.</p> <p>The ALJ is not required to recite specific questions regarding right to representation or claimant's capacity to make an informed choice about representation. However, below are examples of questions ALJ could ask an unrepresented claimant on record:</p> <p>Did you receive hearing acknowledgement letter and its enclosure(s)?</p> <p>Do you understand information contained in that letter, specifically concerning representation?</p> <p>If unrepresented claimant did not receive hearing acknowledgement letter and its enclosure(s), ALJ will provide claimant with a copy and opportunity to read letter. ALJ will enter into record acknowledgement letter and all enclosure(s) sent to unrepresented claimant or provided at hearing.</p> <p>ALJ will answer any questions claimant may have, including explaining claimant's options regarding representation, as outlined in acknowledgement letter.</p> <p>If claimant is illiterate, ALJ must ensure that claimant is aware of his or her options for representation. Specifically, ALJ will explain availability of both free legal services and contingency representation, and access to organizations that assist individuals in obtaining representation.</p> <p>Once ALJ has determined that claimant is capable of making an informed choice, ALJ will either secure on record claimant's decision concerning representation or obtain from claimant a written waiver of claimant's right to representation, which will be marked as an exhibit.</p>	<p>aware of their right to have representation and availability of free legal counsel.</p>
<p>Rule 24 Representation</p> <p>Any party shall have right to appear at a hearing in person, by counsel, or by other representative, to examine and cross-examine witnesses, and to introduce into record documentary or other relevant evidence. ALJ <u>may compel any party to attend hearing.</u></p> <p><u>(b)</u> Each attorney or other representative shall file a notice of appearance. Such notice shall indicate name of case or controversy, if representing a claimant, claimant's social security number, or docket number of</p>	<p>404.1705 / 416.1505</p> <p>http://www.ssa.gov/OP_Home/cfr20/404/404-1705.htm</p> <p>http://www.ssa.gov/OP_Home/cfr20/416/416-1505.htm</p> <p>(a) You may appoint as your representative in dealings with us, any attorney in good standing who—</p> <p>(1) Has right to practice law before a court of a State, Territory, District, or island possession of United States, or before Supreme Court or a lower Federal court of United States;</p> <p>(2) Is not disqualified or suspended from acting as a representative in dealings with us; and</p> <p>(3) Is not prohibited by any law from acting as a representative.</p>	<p>-Attorney qualifications are same for both proposed and existing rules.</p> <p>-Proposed rules do not include if you want to appoint someone who is not an attorney to be your representative.</p> <p>-Proposed rule 26 is similar about notifying a representative if they are not</p>

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<p>case.</p> <p>Every party has right of timely notice and all other rights essential to a fair hearing, including rights to present evidence, to conduct such cross- examination as necessary for complete disclosure of facts, and to be heard by objection, motion, and argument.</p> <p>Every participant shall have right to make a written or oral statement of position. At discretion of ALJ, participants may file a proposed decision, proposed findings of fact, conclusions of law and a post hearing brief.</p> <p>Any person compelled to testify in a proceeding in response to a subpoena may be accompanied, represented, and advised by counsel or other representative.</p> <p>Rule 25 Qualifications of Representatives</p> <p>Any attorney in good standing who—</p> <p>(1) Has right to practice law before a court of a State, Territory, District, or island possession of United States, or before Supreme Court or a lower Federal court of United States;</p> <p>(2) Is not disqualified or suspended from acting as a representative in dealings with us; and</p> <p>(3) Is not prohibited by any law from acting as a representative.</p> <p>Rule 26 Authority for representation</p> <p>Any individual acting in a representative capacity in any adjudicative proceeding are required by ALJ to show his or her authority to act in such capacity</p>	<p><u>(b) You may appoint any person who is not an attorney to be your representative in dealings with us if person—</u></p> <p><u>(1) Is generally known to have a good character and reputation;</u></p> <p><u>(2) Is capable of giving valuable help to you in connection with your claim;</u></p> <p><u>(3) Is not disqualified or suspended from acting as a representative in dealings with us; and</u></p> <p><u>(4) Is not prohibited by any law from acting as a representative.</u></p> <p>(c) We may refuse to recognize person you choose to represent you if person does not meet requirements in this section. We will notify you and person you attempted to appoint as your representative if we do not recognize person as a representative.</p>	<p>qualified and having to show proof of their qualifications.</p>

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<p>Rule 28 Subpoenas</p> <p>(a) When it is necessary for full presentation of a case, an ALJ may issue subpoenas for appearance and testimony of witnesses and for production of books, records, correspondence, papers, or other documents that are material to an issue at hearing.</p> <p>(b) Parties to a hearing who wish to subpoena documents or witnesses must file a written request for issuance of a subpoena with ALJ at least 5 days before hearing date. Written request must give names of witnesses or documents to be produced; describe address or location of witnesses or documents; state important facts that witness or document is expected to prove; and indicate why these facts could not be proven without issuing a subpoena.</p> <p>(c) A subpoena may be served by certified mail or by any person who is not less than 18 years of age. Subpoenaed witnesses will be paid same fees and mileage they would receive if a Federal district court had subpoenaed them.</p> <p>Within 10 days of receipt of a subpoena but no later than date of hearing, person against whom it is directed may file a motion to quash or limit subpoena, giving reasons why subpoena should be withdrawn or why it should be limited in scope. Any such motion shall be answered within 10 days of service, and shall be ruled on immediately thereafter. Order shall specify date, for compliance with specifications of subpoena.</p> <p>Upon failure of any person to comply with an order to testify or a subpoena, ALJ may, where authorized by statute or by law, apply to appropriate district court for enforcement of order or subpoena.</p>	<p>404.950 / 416.1450</p> <p>http://www.ssa.gov/OP_Home/cfr20/404/404-0950.htm http://www.ssa.gov/OP_Home/cfr20/416/416-1450.htm</p> <p>(1) When it is necessary for full presentation of a case, an ALJ or a member of Appeals Council may, issue subpoenas for appearance and testimony of witnesses and for production of books, records, correspondence, papers, or other documents that are material to an issue at hearing.</p> <p>(2) Parties to a hearing who wish to subpoena documents or witnesses must file a written request for issuance of a subpoena with ALJ or at one of our offices at least 5 days before hearing date. Written request must give names of witnesses or documents to be produced; describe address or location of witnesses or documents; state important facts that witness or document is expected to prove; and indicate why these facts could not be proven without issuing a subpoena.</p> <p>(3) <u>We will pay cost of issuing subpoena.</u></p> <p>(4) We will pay subpoenaed witnesses same fees and mileage they would receive if they had been subpoenaed by a Federal district court. http://www.ssa.gov/OP_Home/hallex/I-02/I-2-5-78.html HALLEX I-2-5-78. Use of Subpoenas — General</p> <p>A claimant has a right to request issuance of a subpoena, but regulations state that he or she must make request at least 5 days before hearing date. ALJ is authorized by law and regulation to issue subpoenas to require production of documentary evidence or testimony when reasonably necessary for full presentation of case. Issuance of a subpoena may be necessary when a person having knowledge of a material fact or possession of documentary evidence is reluctant or unwilling to testify or provide evidence. ALJ may issue a subpoena on his or her own motion or at request of a claimant.</p> <p>A. Issuing a Subpoena on Own Motion</p> <p>ALJ must issue a subpoena when an individual has evidence or can offer testimony that ALJ determines is reasonably necessary for full presentation of case, and ALJ has exhausted other means of obtaining this evidence or testimony.</p> <p>B. Issuing a Subpoena at Request of a Claimant</p> <p>ALJ must issue a subpoena on a claimant's timely request if claimant shows that an individual has evidence or can offer testimony that claimant cannot</p>	<p>-Verbatim except for part about certified mail vs. paying cost of serving subpoena.</p> <p>-Proposed rules continues on about quashing subpoena and failure to comply which existing rules do not mention.</p>

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	<p>obtain without subpoena, ALJ determines that evidence or testimony is necessary for full presentation of case, and ALJ has exhausted other means of obtaining this evidence or testimony. Claimant seeking a subpoena must file a written request. request must provide:</p> <p>the names of witnesses or documents to be provided;</p> <p>the address or location of witnesses or documents with sufficient detail to find them;</p> <p>a statement of important facts that witness or document is expected to prove; and</p> <p>the reason why these facts cannot be proven without issuing a subpoena.</p>	
<p>Rule 29 Waiver of Right to Appear</p> <p><u>If all parties waive their right to appear before ALJ or to present evidence or argument personally or by representative, it is not necessary for ALJ to give notice of and conduct an oral hearing. A waiver of right to appear and present evidence and allegations as to facts and law shall be made in writing and filed with ALJ assigned to hear case.</u> Where such a waiver has been filed by all parties and they do not appear before ALJ personally or by representative, ALJ shall make a record of relevant written evidence submitted by parties, together with any pleadings they may submit with respect to issues in case. <u>Such documents shall be considered as all of evidence in case, and decision shall be based on them.</u></p>	<p>404.950 / 416.1450</p> <p>http://www.ssa.gov/OP_Home/cfr20/404/404-0950.htm http://www.ssa.gov/OP_Home/cfr20/416/416-1450.htm</p> <p>You may send ALJ a waiver or a written statement indicating that you do not wish to appear at hearing. You may withdraw this waiver any time before a <u>notice of hearing decision is mailed to you. Even if all of parties waive their right to appear at a hearing, we may notify them of a time and a place for an oral hearing,</u> if ALJ believes that a personal appearance and testimony by you or any other party is necessary to decide case.</p> <p>404.948 / 416.1448</p> <p>http://www.socialsecurity.gov/OP_Home/cfr20/404/404-0948.htm http://www.ssa.gov/OP_Home/cfr20/416/416-1448.htm</p> <p>When an oral hearing is not held, ALJ shall make a record of material evidence. Record will include applications, written statements, certificates, reports, affidavits, and other documents that were used in making determination and any additional evidence you or any other party to hearing present in writing. Decision of ALJ must be based on this record.</p> <p>HALLEX I-2-1-45. http://www.ssa.gov/OP_Home/hallex/I-02/I-2-1-45.html</p>	<p>-Both proposed rules and existing rules and regulations state that claimant has right to not appear at hearing. ALJ will then make their decision based on record.</p> <p>-Proposed rules state that if all parties waive their right to appear “it shall not be necessary for ALJ to give notice of and conduct an oral hearing”</p> <p>-Existing rules and regulations state that claimant can withdraw waiver at any time before a notice of hearing decision has been mailed. It also says “even if all parties waive their right to appear at a hearing, we may notify them of a time and a place for an oral hearing” if they believe that appearance is necessary to make a decision.</p>

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	<p>E Waiver of Right To Appear at Hearing</p> <p>A claimant may waive right to appear at an oral hearing and request that ALJ decide case on evidence of record. <u>Regulations also provide that ALJ may schedule a hearing notwithstanding waiver if he or she believes a personal appearance and testimony from claimant are necessary to properly decide case.</u></p> <p>1.Receipt of Waiver</p> <p>If a claimant states in request for hearing that he or she waives right to appear at a hearing, or otherwise notifies HO that he or she waives right to appear, ALJ or HO staff will take following actions:</p> <p>If claimant is unrepresented, advise claimant of right to representation.</p> <p>Advise claimant of advantages of appearing at a hearing; ensure that claimant is fully advised of possible consequences of his or her waiver; and explain that even though he or she has waived right to appear, ALJ may schedule and conduct a hearing if ALJ deems it necessary.</p>	
<p>Rule 30 Dismissals</p> <p>(a) A request for hearing may be dismissed by its abandonment or by motion of party or parties who filed it. A party shall be deemed to have abandoned a request for hearing, or requested a dismissal, as case may be, if:</p> <p>(1) <u>The party fails to appear at time of scheduled hearing, without good cause, even if party's representative appears;</u></p> <p>(2) <u>At any time before notice of hearing decision is mailed, party or parties that have requested hearing ask to withdraw that request. This request may be submitted in writing to ALJ or made orally at hearing</u></p> <p>(3) <u>person must be in case record. Also, party and representative must have been notified that request for hearing may be dismissed without further notice if party did not appear at time and place of hearing and good cause has not been found by ALJ for failure to appear. If there is no prima facie proof that notice of hearing was received by party, and in lieu of an "Order to Show</u></p>	<p>404.957/ 416.1457</p> <p>http://ssa.gov/OP_Home/cfr20/404/404-0957.htm</p> <p>http://www.ssa.gov/OP_Home/cfr20/416/416-1457.htm</p> <p>Dismissal of a request for a hearing before an ALJ.</p> <p>An ALJ may dismiss a request for a hearing under any of following conditions:</p> <p>(a) At any time before notice of hearing decision is mailed, you or party or parties that requested hearing ask to withdraw request. This request may be submitted in writing to ALJ or made orally at hearing.</p> <p>(b)(1)(i) Neither you nor person you designate to act as your representative appears at time and place set for hearing and you have been notified before time set for hearing that your request for hearing may be dismissed without further notice if you did not appear at time and place of hearing, and good cause has not been found by ALJ for your failure to appear; or</p> <p>(ii) Neither you nor person you designate to act as your representative appears at time and place set for hearing and <u>within 10 days after ALJ mails you a notice asking why you did not appear, you do not give a good reason for failure to appear.</u></p>	<p>-In proposed rules both representative and claimant need to show up to hearing. In existing rules, if only representative shows up that is sufficient.</p> <p>-Current regulations state that they will mail a notice asking why a claimant did not appear at hearing. Proposed rules, they "may" contact a claimant.</p> <p>-HALLEX provides a list of what constitutes "good cause" for failure to appear, proposed rules do not.</p>

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<p><u>Cause" ALJ may:</u></p> <p>(i) <u>Attempt to contact party by telephone</u>, at their last known phone number, which results in no contact being made,</p> <p>(ii) <u>Attempt to ascertain party's last known address and compare it to notice of hearing and, if it is not same as on notice of hearing a new hearing must be scheduled, and.</u></p> <p>(iii) Attempt to contact District Office in order to determine if party's address is correct and, if it is not correct, a new hearing must be scheduled.</p> <p>(iv) <u>If, after doing (i) through (iii) above, party's whereabouts are still not known, and there is no other information upon which to base a conclusion of good cause, then, in such case, request for hearing may be dismissed without necessity of sending an Order to Show Cause.</u></p> <p>(4) Good cause may be established:</p> <p>(i) <u>by sending party and representative, if any, an Order to Show Cause requiring party, within 10 days of service of said Order, to state written reasons establishing good cause for his failure to appear, and ALJ finds, based upon such response, that good cause exists; or</u></p> <p>(ii) <u>by ALJ determining, based on information obtained by any other means, that good cause existed for failure to appear. In determining good cause, an ALJ will consider any physical, mental, educational, or linguistic limitations, including any lack of facility with English language, that a party may have.</u></p> <p>(a) Additional Bases For Dismissal. ALJ also may decide that there is cause to dismiss a hearing request or may refuse to consider any one or more of issues for any of following reasons:</p> <p><u>(1) doctrine of res judicata applies in that there exists a previous determination or decision under this subpart of Regulations about a party's rights on same facts and</u></p>	<p>(2) In determining good cause or good reason under this paragraph, we will consider any physical, mental, educational, or linguistic limitations (including any lack of facility with English language) which you may have.</p> <p>(c) ALJ decides that there is cause to dismiss a hearing request entirely or to refuse to consider any one or more of issues because—</p> <p>(1) doctrine of <i>res judicata</i> applies in that we have made a previous determination or decision under this subpart about your rights on same facts and on same issue or issues, and this previous determination or decision has become final by either administrative or judicial action;</p> <p>(2) person requesting a hearing has no right to it under § 404.930;</p> <p>(3) You did not request a hearing within stated time period and we have not extended time for requesting a hearing under § 404.933(c); or</p> <p>(4) You die, there are no other parties, and we have no information to show that another person may be adversely affected by determination that was to be reviewed at hearing. However, dismissal of hearing request will be vacated if, within 60 days after date of dismissal, another person submits a written request for a hearing on claim and shows that he or she may be adversely affected by determination that was to be reviewed at hearing.</p> <p>I-2-4-25.Dismissal Due to Claimant's Failure to Appear http://ssa.gov/OP_Home/hallex/I-02/I-2-4-25.html</p> <p>A.Failure to Appear — Introduction</p> <p>An ALJ (ALJ) may generally dismiss a request for hearing (RH) based on failure to appear in following circumstances, <u>except when a parent or guardian appears at hearing on behalf of a claimant who is a minor.</u> An ALJ's attempts to develop good cause, and any responses received, must be associated in B section of claim(s) folder.</p> <p>1.Neither Claimant Nor Representative Appears</p> <p>An ALJ may dismiss an RH when neither claimant nor appointed representative, if any, appears at time and place of a scheduled hearing and neither shows good cause for absence. Except in circumstances set forth in this provision, an ALJ will develop whether there is good cause for failure to appear.</p> <p>2.Neither Claimant Nor Representative Appears on Time</p> <p>An ALJ may also dismiss an RH on basis of failure to appear when an unrepresented claimant, or claimant and his or her representative, fails to appear on time for hearing. However, ALJ must first develop whether there is good cause for tardiness.</p>	

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<p><i>on same issue or issues, and this previous determination or decision has become final by either administrative or judicial action;</i></p> <p><i>(2) person requesting a hearing has no right to it under applicable authority;</i></p> <p><i>(3) party did not request a hearing within stated time period and Social Security Administration has not extended time for requesting a hearing; or</i></p> <p><i>(4) A party dies, there are no other parties, and we have no information to show that another person may be adversely affected by determination that was to be reviewed at hearing. However, dismissal of hearing request will be vacated if, within 60 days after date of dismissal, another person submits a written request for a hearing on claim and shows that he or she may be adversely affected by determination that was to be reviewed at hearing.</i></p>	<p>3.Third Party Appears on Behalf of Minor or Age 18 Claimant</p> <p>Occasionally, a claimant may fail to appear at hearing, but a parent or guardian who has not been appointed as a representative will appear at hearing on claimant's behalf. If an appointed representative is present, ALJ will proceed as noted in HALLEX I-2-4-25 D below.</p> <p>The ALJ will not proceed with hearing if:</p> <p>The claimant is age 18 or older, and</p> <p>The claim is an initial application for adult disability benefits or based on continuation thereof.</p> <p>If hearing cannot proceed, next appropriate action depends on whether claimant returned acknowledgement of hearing form. See HALLEX I-2-3-20 C. If claimant responded and indicated he or she would appear at hearing, ALJ may dismiss request for hearing. If claimant was not person who responded to acknowledgement of hearing form, or acknowledgement form was not returned, see procedures noted in I-2-4-25 C below.</p> <p>The term “good cause” refers to a reasonable explanation for failing to comply with a requirement. When determining whether good cause exists for failure to appear, ALJ must base decision on circumstances of each individual case. In doing so, ALJ must consider any physical, mental, educational, or linguistic limitations that may have prevented claimant from appearing at scheduled time and place of hearing, akin to requirements for consideration of good cause for late filing in 20 CFR 404.911, 416.1411, 405.20, and Social Security Ruling 91-5p.</p> <p>1.Circumstances That Generally Establish Good Cause</p> <p>There are no set criteria for determining what constitutes good cause for failure to appear at time and place of a scheduled hearing. However, good cause generally exists in any one of following three circumstances.</p> <p>Good cause for failure to appear at scheduled time and place of hearing generally exists <u>when claimant did not receive proper notification of scheduled hearing.</u></p> <p>Before dismissing an RH for failure to appear, ALJ must determine whether there is evidence in record that shows claimant was properly notified of time and place set for hearing, as described in HALLEX I-2-3-20 C. ALJ will consider following:</p> <p>If claimant has an appointed representative, notification to representative is sufficient to establish notification to claimant.</p>	

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	<p>If follow up contact was made by telephone, ALJ must ensure proper documentation is in file, as noted in HALLEX I-2-3-20 C.</p> <p>If claimant alleges he or she reported a new address to another agency component such as field office or teleservice center but notice of hearing was sent to an outdated address, ALJ will review queries noted in HALLEX I-2-3-15 B and carefully consider allegation.</p> <p>If record does not show there was proper notification of scheduled hearing, ALJ must reschedule hearing and provide proper notification of rescheduled hearing.</p> <p>If claimant or appointed representative received proper notification and neither appears at time of scheduled hearing,</p> <p>Good cause for failing to appear at scheduled time and place of hearing generally exists when an <u>unforeseeable event occurred that did not provide claimant or appointed representative enough time to notify ALJ and request a postponement before scheduled hearing.</u></p> <p>Good cause for failure to appear at scheduled time and place of hearing generally exists when appointed representative:</p> <p><u>Withdrew representation shortly before scheduled hearing (approximately a week or less before scheduled hearing), or appeared at hearing and withdrew as representative, and</u></p> <p><u>There is no indication in record that claimant was aware representative would not be appearing at hearing on his or her behalf.</u></p> <p>In this circumstance, ALJ must develop for good cause.</p> <p>To develop good cause, HO will:</p> <p>Send a Form HA-L90, Request To Show Cause For Failure To Appear, to claimant and appointed representative, if any;</p> <p>Give claimant and appointed representative 10 days from date of Form HA-L90 to respond; and</p> <p>Provide an additional 5 days for mailing time before proceeding.</p> <p>If neither claimant nor appointed representative, if any, appears at scheduled hearing, ALJ may dismiss RH without developing good cause in following</p>	

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	<p>circumstances.</p> <p><u>The ALJ need not develop good cause if record shows that claimant received Notice of Hearing and claimant does not have a physical, mental, educational, or linguistic limitation that may affect his or her ability to understand Notice of Hearing. If those criteria are met, ALJ can generally presume claimant fully understands possible consequences of his or her failure to appear at time and place of a scheduled hearing. Notice of Hearing notifies a claimant that RH may be dismissed without further notice if neither claimant nor appointed representative, if any, appears at scheduled hearing.</u></p> <p><u>It is unnecessary to develop good cause when:</u></p> <p><u>the claimant did not return acknowledgment form sent with Notice of Hearing.</u></p> <p>Any documentation generated to comply with regulatory procedures must be associated in B section of claim(s) folder and exhibited if ALJ issues a dismissal. Documentation may include copies of letters sent to claimant, reports of contact documenting telephone calls, and re-mailed copies of Notice of Hearing and acknowledgement form.</p> <p>If Notice of Hearing is returned to HO as undeliverable, all attempts to contact claimant by other means are unsuccessful, and it is concluded that claimant's whereabouts are unknown, ALJ may dismiss RH after:</p> <p>Verifying that address used on Notice of Hearing and any other contact correspondence is most recent address in CPMS and on PCOM system queries.</p> <p>Ensuring that all attempts to contact claimant are clearly documented in B section of claim(s) folder and documentation is exhibited. For example, any envelopes returned by post office as undeliverable must be associated with claim(s) folder, as well as any statements made by individuals regarding absence or disappearance of claimant.</p> <p>An ALJ may not dismiss RH until after time scheduled for hearing because claimant may learn of scheduled hearing in another way and appear. If claimant does not appear at scheduled hearing, ALJ may dismiss RH but must describe all efforts to contact claimant in dismissal order.</p>	

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	<p><u>In some cases, an appointed representative will appear at time and place of scheduled hearing but will withdraw as representative if claimant does not appear. If claimant did not appear at hearing but notified HO that he or she is aware representative was going to withdraw, ALJ may dismiss RH.</u> However, if HO did not receive notification from claimant indicating he or she was aware representative was going to withdraw at hearing, ALJ must develop good cause for failure to appear.</p> <p>If claimant alleges he or she did not appear at hearing because claimant believed representative was appearing on his or her behalf, or claimant otherwise indicates he or she wants to proceed with hearing, ALJ will generally find good cause for failure to appear, and ALJ will reschedule hearing. However, if claimant does not respond to Form HA-L90, ALJ may dismiss RH.</p> <p><u>If an appointed representative appears at scheduled hearing without claimant and continues to represent claimant during hearing, dismissal is never appropriate.</u> However, ALJ may determine that claimant has constructively waived right to appear at hearing if:</p> <p>The representative is unable to locate claimant;</p> <p>The Notice of Hearing was mailed to claimant's last known address; and</p> <p>If ALJ finds that claimant has constructively waived right to appear at hearing, ALJ need not proceed with hearing and may choose to issue a decision on record. However, if medical expert or vocational expert testimony is needed to resolve case, ALJ may choose to proceed with hearing, accepting testimony of witness(es) and allowing appointed representative to question witness(es) and make arguments on claimant's behalf.</p> <p>In any event, ALJ will advise appointed representative, either on record during hearing or in writing thereafter, that he or she will not send a Request to Show Cause for Failure to Appear to claimant because claimant has constructively waived right to appear at hearing. When done in writing, ALJ must associate writing with record.</p> <p>If ALJ finds that claimant has not constructively waived right to appear at hearing, ALJ may choose to proceed with hearing, accepting testimony of witness(es) and allowing appointed representative to question witness(es) and make arguments on claimant's behalf. ALJ will advise appointed</p>	

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	<p>representative that a Request to Show Cause for Failure to Appear will be sent to claimant to ask why he or she did not appear at scheduled hearing and whether a supplemental hearing should be held. After 10-day comment period expires (with an additional five days for mailing time), ALJ will either:</p> <p>Determine that claimant has constructively waived his or her right to appear for a hearing (if claimant fails to respond to Request to Show Cause for Failure to Appear or fails to show good cause for failure to appear at scheduled hearing), and issue a decision based on evidence of record; or</p> <p>Offer claimant a supplemental hearing to provide testimony if claimant establishes good cause for failure to appear at scheduled hearing.</p>	
<p>Rule 31 Continuances</p> <p><u>Continuances will only be granted in cases of prior judicial commitments or undue hardship, or a showing of other good cause.</u></p> <p><u>Except for good cause shown, requests for continuances must be filed within seven (7) days prior to date set for hearing.</u></p> <p><u>Motions for continuances are in writing. ALJ—Copies shall be served on all parties.</u> Any motions for continuances made within 7 days of date of scheduled proceeding shall, in addition to written request, be telephonically conveyed to ALJ or a member of his or her staff and to all other parties.</p> <p>Time permitting, ALJ shall issue a written order in advance of scheduled proceeding date, which either allows or denies request. Otherwise ruling may be made orally by telephonic communication to party requesting it.</p>	<p><u>I-2-6-80.Continued or Supplemental Hearing</u> http://www.ssa.gov/OP_Home/hallex/I-02/I-2-6-80.html</p> <p><u>Circumstances may require an ALJ to adjourn a hearing in progress and continue it at a later date, conduct a supplemental hearing, or reopen record to receive additional evidence.</u> If testimony at a hearing leaves unanswered questions, ALJ may supplement hearing record with additional oral testimony, a deposition, or additional documentary evidence.</p> <p>A continuance or supplemental hearing is appropriate when:</p> <p><u>certain testimony or a document adduced at hearing has taken claimant by surprise, is adverse to claimant's interest, and presents evidence that claimant could not reasonably have anticipated and to which claimant is not prepared to respond;</u></p> <p><u>ALJ believes additional testimony regarding a new issue is appropriate;</u></p> <p><u>ALJ discovers during hearing that testimony of a person, who is absent, is needed and person may be available at a later date;</u></p> <p><u>the claimant or ALJ wishes to present evidence, but cannot present it by document, affidavit, or deposition without diminishing its probative value because of absence of opportunity for detailed examination or cross-examination of witness;</u></p> <p><u>an order of remand directs ALJ to hold a supplemental hearing</u></p> <p><u>a request is made to cross-examination of author or provider of post-hearing evidence is requested.</u></p> <p>If ALJ decides during course of a hearing to continue hearing and hold a</p>	<p>-Proposed rules and existing rules seem to have a different idea what “continuances” are. In proposed rules it seems to just mean to change date of a hearing. In existing HALLEX regulations it means supplemental hearing.</p> <p>-Comparing existing regulations on changing date of a hearing to proposed rule 31 on continuances, differences are: proposed rule is a hard rule of “must be” filed 7 days prior to hearing date. In existing rules it is “earliest possible opportunity”</p> <p>-Proposed rules says that motion for continuances “shall be” in writing whereas in existing rules request “if at all possible” be in writing.</p> <p>-Proposed rules says that copies of motion will be served to all parties, whereas</p>

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	<p>supplemental hearing at a later date, ALJ may set date for supplemental hearing at that time or state that he or she will notify claimant later of date of supplemental hearing. Rules governing conduct of initial hearing apply to continued or supplemental hearing. If an ALJ decides to conduct a supplemental hearing, he or she must reopen record.</p> <p>404.936 / 416.1436 http://www.socialsecurity.gov/OP_Home/cfr20/404/404-0936.htm http://ssa.gov/OP_Home/cfr20/416/416-1436.htm</p> <p>If you object to time or place of your hearing, <u>you must notify us at earliest possible opportunity before time set for hearing. You must state reason for your objection and state time and place you want hearing to be held. If at all possible, request should be in writing.</u> We will change time or place of hearing if ALJ finds you have good cause.</p>	<p>existing rules do not mention this.</p>
<p>Rule 32 Prehearing conferences</p> <p>Upon motion of a party or upon ALJ's own motion, <u>judge may direct parties or their counsel to participate in a conference at any reasonable time, prior to or during course of hearing</u>, when ALJ finds that proceeding would <u>be expedited by a prehearing conference</u>. Such conferences normally shall be conducted by conference telephonic communication unless, in opinion of ALJ, such method would be impractical, or when such conferences can be conducted in a more expeditious or effective manner by correspondence or personal appearance. Reasonable notice of time, place and manner of conference shall be given.</p> <p><u>(2) At conference, following matters shall be considered: (i) simplification or amendment of issues; (ii) possibility of obtaining stipulations of facts and of authenticity and accuracy of documents which will avoid unnecessary proof; (iii) limitation of number of expert or other witnesses; (iv) submit copies of proposed exhibits; (v) identification of documents or matters of which official notice may be requested; (vi) A schedule to be followed by party or parties for</u></p>	<p>§ 404.961 / 416.1461 http://www.socialsecurity.gov/OP_Home/cfr20/404/404-0961.htm http://www.ssa.gov/OP_Home/cfr20/416/416-1461.htm</p> <p>ehearing and posthearing conferences.</p> <p>The ALJ may decide on his or her own, or at request of any party to hearing, to hold a prehearing or posthearing conference to facilitate hearing or hearing decision. <u>ALJ shall tell parties of time, place and purpose of conference at least seven days before conference date</u>, unless parties have indicated in writing that they do not wish to receive a written notice of conference. At conference, ALJ may consider matters in addition to those stated in notice, if parties consent in writing. <u>A record of conference will be made. ALJ shall issue an order stating all agreements and actions resulting from conference. If parties do not object, agreements and actions become part of hearing record and are binding on all parties.</u></p> <p>404.941 / 416.1441 http://www.socialsecurity.gov/OP_Home/cfr20/404/404-0941.htm</p> <p>http://www.ssa.gov/OP_Home/cfr20/416/416-1441.htm</p> <p>After a hearing is requested but before it is held, we may, for purposes of a prehearing case review, forward case to component of our office (including</p>	<p>-Very different.</p> <p>-Proposed rules are saying if proceeding would be "expedited" by a prehearing conference he or she will motion for one.</p> <p>-Existing rules say that record of conference will be made whereas proposed rules say "IF directed by ALJ a record of prehearing conference shall be made".</p> <p>-Proposed rule also says that following matters will be considered including "the possibility of obtaining stipulations of facts". Current regulations don't allow stipulating.</p> <p>-The existing rules gives a very specific amount of time</p>

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<p><u>completion of actions decided at conference; and (vii) Such other matters as may expedite and aid in disposition of proceeding.</u></p> <p><u>If directed by ALJ a record of prehearing conference shall be made.</u></p> <p><u>Actions taken as a result of conference shall be reduced to a written order, unless ALJ elects to make a statement on record at hearing summarizing actions taken.</u></p> <p><u>If, after written notice given to a party at last address of record, party fails, without good cause, to appear, in addition to any order contemplated by subparagraph (c) above, ALJ may dismiss request for hearing.</u></p>	<p>a State agency) that issued determination being reviewed. That component will decide whether it should revise determination based on preponderance of evidence. A revised determination may be fully or partially favorable to you. A prehearing case review will not delay scheduling of a hearing unless you agree to continue review and delay hearing. If prehearing case review is not completed before date of hearing, case will be sent to ALJ unless a favorable revised determination is in process or you and other parties to hearing agree in writing to delay hearing until review is completed.</p> <p><u>We may conduct a prehearing case review if—</u></p> <p><u>(1) Additional evidence is submitted;</u></p> <p><u>(2) There is an indication that additional evidence is available;</u></p> <p><u>(3) There is a change in law or regulation; or</u></p> <p><u>(4) There is an error in file or some other indication that prior determination may be revised.</u></p> <p>I-2-1-75.Prehearing Conference</p> <p>http://www.socialsecurity.gov/OP_Home/hallex/I-02/I-2-1-75.html</p> <p>An ALJ may decide on his or her own authority, or at request of any party to hearing (see <u>Hearings, Appeals and Litigation Law (HALLEX) manual I-2-1-45</u>), to hold a prehearing conference (PHC) to facilitate hearing or hearing decision.</p> <p>If a case has not yet been assigned to an ALJ, Hearing Office Chief ALJ (HOCALJ) will select an authorized designee to conduct PHC. If HOCALJ assigns an authorized designee to conduct PHCs, hearing office management will assign cases to authorized designees in rotation as much as possible, similar to rotational assignment of cases to ALJs.</p> <p>If a case has already been assigned to an ALJ, ALJ may either conduct PHC or ask HOCALJ to assign next in rotation authorized designee to conduct PHC. If an ALJ asks for assistance of an authorized designee, ALJ must provide authorized designee with specific instructions regarding purpose of PHC.</p> <p><u>Generally, there is no authority for an ALJ to dismiss a request for hearing based solely on a claimant's failure to attend a PHC.</u> However, an ALJ may dismiss request for hearing if ALJ schedules a PHC where he or she will conduct proceeding and:</p> <p>The ALJ notified claimant and appointed representative (if any) in PHC notice that he or she may dismiss request for hearing if neither claimant nor appointed representative appears at PHC and neither claimant nor</p>	<p>of at least 7 days before conference date there will be a notice. proposed rule just states “the judge may direct parties or their counsel to participate in a conference at any reasonable time prior to or during course of hearing”</p>

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	<p>appointed representative (if any) appears at PHC; or</p> <p>Neither claimant nor appointed representative (if any) appears at PHC, ALJ requests in writing that claimant show a good reason for failing to appear, and within 10 days of notice, claimant does not give a good reason for failing to appear.</p> <p>B.Purpose</p> <p>The purpose of a PHC is generally to:</p> <p><u>Advise an unrepresented claimant of his or her right to representation;</u></p> <p><u>Explain hearing process to claimant;</u></p> <p><u>Develop case record; or</u></p> <p><u>Obtain information necessary to determine next appropriate action or to come to agreement on an issue.</u></p> <p>C.Scheduling PHC</p> <p>Depending on circumstances involved, and after consulting with hearing office management, ALJ or authorized designee will decide whether to conduct PHC in person, by video teleconferencing, or by telephone. Using appropriate templates in Document Generation System, ALJ or authorized designee <u>will notify claimant of time, place, and purpose of PHC in writing at least 7 days before PHC date</u>, unless all parties have indicated in writing that they waive right to written notice of PHC. ALJ or authorized designee will ensure this writing is associated with record, and will note date and time of PHC in a Remark in Case Processing and Management System (CPMS).</p> <p>Depending on purpose of PHC, ALJ or authorized designee will send all necessary forms and information to claimant with PHC notice. Generally, when claimant is not scheduled to appear at PHC in person and claimant is unrepresented, necessary forms and information will include following:</p> <p>An encrypted compact disc (CD) of claim(s) file and instructions on opening CD;</p> <p>The “Your Right to Representation” pamphlet (SSA Publication No. 05-10075);</p> <p>A list of representative referral services and legal service organizations;</p> <p>Form HA-4631, Claimant's Recent Medical Treatment;</p> <p>Form HA-4632, Claimant's Medications;</p> <p>Form HA-4633, Claimant's Work Background;</p>	

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	<p>Form SSA-1696, Appointment of Representative; and</p> <p>Form SSA-827, Authorization to Disclose Information to Social Security Administration (if needed, i.e., previously obtained SSA-827s are or soon will be more than 12 month old).</p> <p>D.Conducting PHC</p> <p><u>Each PHC must be recorded using Digital Recording Acquisition Project equipment, and ALJ or authorized designee must ensure recording becomes part of record.</u></p> <p>If an authorized designee who is not assigned to adjudicate case conducts a PHC, authorized designee must not discuss merits of claimant's case, likelihood of benefits being awarded or denied, or strength of claimant's case. authorized designee must neither encourage nor discourage representation, pursuant to Social Security Administration (SSA)</p> <p>Generally, a PHC will begin with an opening statement that provides following information:</p> <p>An introduction by ALJ or authorized designee;</p> <p>An explanation that PHC will be recorded (and why);</p> <p>Verification of claimant's contact information;</p> <p>A brief statement explaining how PHC will be conducted, objectives of PHC, and what will be discussed; and</p> <p>If claimant appears to be unrepresented, verification that claimant is unrepresented and an explanation of right to representation.</p> <p>Depending on purpose of PHC, ALJ or authorized designee may need to provide or obtain following information during PHC:</p> <p><u>A brief discussion of hearing process, what to expect at a hearing, and what happens next;</u></p> <p><u>A brief explanation of what is needed for a finding of disability;</u></p> <p><u>A discussion of claim(s) file and need to update claimant's medical treatment records, which may include obtaining a new HA-4631, HA-4632, or SSA-827. (See HALLEX I-2-5-14 A for more information about obtaining an SSA-827);</u></p> <p><u>A discussion of any recent work or school activity, importance of notifying SSA if claimant works or returns to school, and need to complete an HA-4633 to record any new work activity; or</u></p>	

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	<p><u>A discussion of particular issue for which ALJ requested a PHC.</u></p> <p>The ALJ or authorized designee will provide claimant an opportunity to ask any questions he or she may have, but will avoid answering any questions that are outside scope of PHC. Unless a party to hearing objects, an ALJ who conducts a PHC may issue an order on record during PHC, reiterating all agreements and actions resulting from PHC. If an ALJ conducted PHC and ALJ agreed to take certain actions or issue an order after PHC, ALJ must explain that he or she will exhibit any orders or agreements after PHC and make information a part of record. Following PHC, ALJ will follow procedures. Any agreed to issues or actions are binding on all parties.</p> <p>E.After PHC</p> <p>After PHC, ALJ or authorized designee will complete a form SSA-5002, Report of Contact, to document claimant's name and PHC date, and to summarize actions taken at PHC. If an ALJ conducted PHC and ALJ agreed to take certain actions or issue an order, <u>ALJ must summarize actions to be taken in writing and proffer writing to claimant and representative, if any. Any agreed to issues or actions are binding on all parties.</u></p> <p>The ALJ or authorized designee will also add a Remark in CPMS documenting PHC and whether claimant attended PHC.</p>	
<p>Rule 50 Authority of ALJ</p> <p>(a) General powers. In any proceeding under this part, <u>ALJ shall have all powers necessary to conduct of fair and impartial hearings,</u> including, following: (1) Conduct formal hearings in accordance with provisions of this part; (2) Administer oaths and examine witnesses; (3) <u>Compel production of documents and appearance of witnesses in control of parties;</u> (4) Compel appearance of witnesses by issuance of subpoenas as authorized by statute or law; (5) Issue decisions and orders; (6) Take any action authorized by Administrative Procedure Act; (7) Exercise, for purpose of hearing and in regulating conduct of proceeding, such powers vested in Commissioner of Social Security Administration as are necessary and appropriate therefor; (8) Where applicable, take any appropriate action authorized by Rules of Civil Procedure for United States District Courts, issued from time to time and amended pursuant to 28 U.S.C.</p>	<p>404.944 / 416.1444</p> <p>http://www.ssa.gov/OP_Home/cfr20/404/404-0944.htm http://www.ssa.gov/OP_Home/cfr20/416/416-1444.htm</p> <p><u>A hearing is open to parties and to other persons ALJ considers necessary and proper. At hearing, ALJ looks fully into issues, questions you and other witnesses, and accepts as evidence any documents that are material to issues. ALJ may stop hearing temporarily and continue it at a later date if he or she believes that there is material evidence missing at hearing.</u> ALJ may also reopen hearing at any time before he or she mails a notice of decision in order to receive new and material evidence. ALJ may decide when evidence will be presented and when issues will be discussed.</p> <p>404.937 / 416.147</p> <p>http://www.socialsecurity.gov/OP_Home/cfr20/404/404-0937.htm http://www.ssa.gov/OP_Home/cfr20/416/416-1437.htm</p>	

ALJ Proposed Rules (summarized)	Existing Rules and Regulations (summarized)	Differences / Notes
<p>2072; and (9) Do all other things necessary to enable him or her to discharge duties of office.</p> <p>(b) Enforcement. <u>If any person in proceedings before an ALJ disobeys or resists any lawful order or process, or misbehaves during a hearing or so near place thereof</u> as to obstruct same, or neglects to produce, after having been ordered to do so, any pertinent book, paper or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take oath as a witness, or after having taken oath refuses to be examined according to law, ALJ responsible for adjudication, where authorized by statute or law, may certify facts to Federal District Court having jurisdiction in place in which he or she is sitting to request appropriate remedies.</p>	<p>(b)(1) At request of any hearing office employee, <u>Hearing Office Chief ALJ will determine, after consultation with presiding ALJ, whether a claimant or other individual poses a reasonable threat to safety of our employees or other participants in hearing.</u> Hearing Office Chief ALJ will find that a claimant or other individual poses a threat to safety of our employees or other participants in hearing when he or she determines that individual has made a threat and there is a reasonable likelihood that claimant or other individual could act on threat or when evidence suggests that a claimant or other individual poses a threat. In making a finding under this paragraph, Hearing Office Chief ALJ will consider all relevant evidence, including any information we have in claimant's record and any information we have regarding claimant's or other individual's past conduct.</p> <p>(2) If Hearing Office Chief ALJ determines that claimant or other individual poses a reasonable threat to safety of our employees or other participants in hearing, Hearing Office Chief ALJ will either:</p> <p>(i) Require presence of a security guard at hearing; or</p> <p>(ii) Require that hearing be conducted by video teleconference or by telephone.</p> <p>(c) If we have banned a claimant from any of our facilities, we will provide claimant with opportunity for a hearing that will be conducted by telephone.</p> <p>(d) actions of Hearing Office Chief ALJ taken under this section are final and not subject to further review.</p> <p>I-2-0-5.Hearing Office Chief ALJ, ALJ and Hearing Office Staff Responsibilities http://ssa.gov/OP_Home/hallex/I-02/I-2-0-5.html</p> <p>A.Hearing Office Chief ALJ (HOCALJ) Responsibilities</p> <p>In addition to hearing and deciding cases, Hearing Office Chief ALJ (HOCALJ), under delegation from Chief ALJ, has authority to assign cases to ALJs. HOCALJ has administrative and managerial responsibility for all personnel in hearing office (HO) and provides overall guidance and direction regarding adherence to time and attendance procedures; staffing, space, equipment and expert witness needs; rotational assignment of cases and review of work products; application of performance standards and appraisals; and approval of travel vouchers, itineraries and expenditures. HOCALJ provides advice and guidance to ALJs regarding interpretation of applicable law, regulations, rulings and judicial precedents. HOCALJ participates in investigations, in coordination with Regional Chief ALJ, into</p>	

ALJ Proposed Rules (summarized)	Existing Rules and Regulations (summarized)	Differences / Notes
	<p>allegations of misconduct on part of any employee, including ALJs, ensures compliance with principles of equal employment opportunity and OHA's Affirmative Employment Plan, and conducts labor management functions consistent with collective bargaining agreements. HOCALJ ensures timely and accurate response to public and congressional inquiries; performs liaison functions between HO and various federal and local government agencies, including bar associations, medical and vocational rehabilitation associations; and conducts periodic training.</p> <p>B.ALJ (ALJ) Responsibilities</p> <p>When a case is assigned to an ALJ for a hearing and decision, ALJ is responsible for all actions necessary to process case. ALJ's principal responsibilities are to hold a full and fair hearing and issue a legally sufficient and defensible decision.</p>	
<p>Rule 52 Disqualification</p> <p>(a) When an ALJ deems himself or herself disqualified to preside in a particular proceeding, such judge shall withdraw therefrom by notice on record directed to Chief ALJ.</p> <p>(b) Whenever any party shall deem ALJ for any reason to be disqualified to preside, or to continue to preside, in a particular proceeding, that party shall file with ALJ a motion to recuse. <u>motion shall be supported by an affidavit setting forth alleged grounds for disqualification. ALJ shall rule upon motion.</u></p> <p>(c) In event of disqualification or recusal of an ALJ as provided in paragraph (a) or (b) of this section, <u>Chief ALJ shall refer matter to another ALJ for further proceedings.</u></p>	<p>404.940 / 416.1440</p> <p>http://www.socialsecurity.gov/OP_Home/cfr20/404/404-0940.htm http://www.ssa.gov/OP_Home/cfr20/416/416-1440.htm</p> <p>An ALJ shall not conduct a hearing if he or she is prejudiced or partial with respect to any party or has any interest in matter pending for decision. If you object to ALJ who will conduct hearing, you must notify ALJ at your earliest opportunity. ALJ shall consider your objections and shall decide whether to proceed with hearing or withdraw. If he or she withdraws, Associate Commissioner for Hearings and Appeals, or his or her delegate, will appoint another ALJ to conduct hearing. If ALJ does not withdraw, you may, after hearing, present your objections to Appeals Council as reasons why hearing decision should be revised or a new hearing held before another ALJ.</p> <p>I-2-1-60.Disqualification of an ALJ Assigned to a Case</p> <p>An ALJ must disqualify or recuse himself or herself from adjudicating a case if ALJ is prejudiced or partial with respect to any party or has any interest in matter pending for decision.</p> <p>However, disqualification is not a matter of personal preference or reluctance to handle a particular case. An ALJ must have reasonable and proper grounds for disqualifying himself or herself. For example, an ALJ may withdraw from case if:</p>	<p>-In existing rules a claimant only needs to just notify ALJ. For proposed rules, a claimant will need to get a affidavit.</p> <p>-In both cases ALJ will make decision to step down from case.</p> <p>-In existing rules Associate Commissioner for Hearings and Appeals will appoint another ALJ. In proposed rules Chief ALJ will refer matter to another ALJ.</p> <p>-HALLEX has very specific regulations on steps after an ALJ has removed himself from a case – such as notices to claimant etc as opposed to proposed rules.</p>

ALJ Proposed Rules (summarized)	Existing Rules and Regulations (summarized)	Differences / Notes
	<p>The ALJ shares an acquaintance with, but does not know, claimant or any other party;</p> <p>The ALJ has particular knowledge about claimant or any other party from an extrajudicial source; or</p> <p>The ALJ believes his or her participation in case would give an appearance of impropriety.</p> <p>B.ALJ Voluntarily Disqualified</p> <p>1.If ALJ disqualifies himself or herself from a case on his or her own initiative, and hearing office has not sent notice of hearing to claimant, ALJ need not send notice of disqualification to claimant.</p> <p>2.If hearing office has sent notice of hearing to claimant and ALJ is later disqualified, claimant must be notified of disqualification. This notice requirement applies regardless of whether disqualification is before, during, or after a hearing. ALJ is not required to provide claimant with specific reason(s) for disqualification, but may voluntarily choose to do so.</p> <p>If ALJ knows before hearing of a reason for disqualification, ALJ must disqualify himself or herself before date of hearing. If ALJ disqualifies himself or herself either as a result of an objection received from a claimant, or on his or her own initiative after notice of hearing is sent to claimant, ALJ must notify claimant of disqualification in writing, informing claimant that:</p> <p style="padding-left: 40px;">The date set for hearing has been cancelled (if cancellation is necessary); and</p> <p style="padding-left: 40px;">The claimant will receive an amended notice of hearing when another ALJ is assigned to conduct hearing.</p> <p>Under some circumstances, an ALJ may not be aware of need to disqualify himself or herself until time of hearing.</p> <p>If ALJ needs to disqualify himself or herself at hearing, ALJ's oral statement on record is sufficient notice to claimant. After verbal notice of disqualification, ALJ will inform claimant that another ALJ will be assigned to case and hearing will be rescheduled.</p> <p>If reason for disqualification comes to ALJ's attention after a hearing, ALJ will notify claimant of disqualification in writing and associate writing with record. writing must inform claimant that:</p>	

ALJ Proposed Rules (summarized)	Existing Rules and Regulations (summarized)	Differences / Notes
	<p>The ALJ is disqualifying himself or herself; Another ALJ will be assigned to decide case; The newly assigned ALJ will determine whether a supplemental hearing is necessary and will provide notice to claimant if another hearing is needed; and The newly assigned ALJ will issue decision in case.</p> <p>If a claimant objects to ALJ assigned to his or her case, he or she must do so at earliest opportunity. ALJ will consider objection and determine whether to proceed or withdraw.</p> <p>If ALJ decides disqualification is appropriate, procedures in Hearings, Appeals and Litigation Law (HALLEX) manual I-2-1-60 B above apply.</p> <p>If ALJ decides before hearing that claimant's reasons for objecting do not warrant disqualification, ALJ will set forth reasons in writing and reiterate his or her decision in opening statement at hearing.</p> <p>If claimant objects at hearing, and ALJ refuses at hearing to disqualify himself or herself, ALJ will set forth reasons for his or her decision on record during hearing.</p> <p>If claimant objects after hearing, and ALJ decides that claimant's reasons for objecting do not warrant disqualification, ALJ will set forth reasons for his or her decision in jurisdiction and procedural history section of decision.</p>	
<p>Rule 55 Official notice</p> <p>Official notice may be taken of any material fact, not appearing in evidence in record, which is among traditional matters of judicial notice: Provided, however, that parties shall be given adequate notice, at hearing or by reference in ALJ's decision, of matters so noticed, and shall be given adequate opportunity to show contrary.</p>		
<p>Rule 56 In camera orders and limitation of evidence</p> <p>Upon application of any party ALJ <u>may limit introduction of evidence or issue such protective or other orders as in his or her judgment may be</u></p>	<p>HALLEX I-2-5-28</p> <p>If an ALJ receives new evidence before hearing from a source other than claimant or representative, if any, and ALJ proposes to enter evidence into record as an exhibit, ALJ must give claimant or representative an opportunity</p>	<p>-Proposed rules gives power to ALJ to limit evidence when they want.</p> <p>-Existing rules there is no</p>

ALJ Proposed Rules (summarized)	Existing Rules and Regulations (summarized)	Differences / Notes
<p><u>consistent</u> with objective of protecting privileged communications, or to prevent undue and unreasonable annoyance, embarrassment, or oppression</p>	<p>to review evidence before hearing.</p> <p><u>If new evidence indicates that claimant has a serious illness of which claimant and treating source may not be aware, ALJ will exercise appropriate discretion to avoid adversely affecting claimant's medical situation, while proceeding with actions necessary to protect claimant's right to due process.</u></p> <p><u>If an ALJ receives new evidence after hearing from a source other than claimant or representative, if any, and ALJ proposes to enter evidence into record as an exhibit, ALJ will follow procedures</u></p>	<p>limiting.</p>
<p>Rule 57 Exhibits</p> <p>All exhibits offered in evidence shall be consecutively numbered, lettered, or both.</p> <p>Each exhibit shall concern only one source or medical provider. Pages of each exhibit shall be consecutively numbered. If exhibit is duplicated, it shall be properly authenticated and legible. <u>If exhibit is in handwriting, it shall be legible or shall be typewritten so that it is legible.</u> If it is a medical exhibit, it shall be clear from exhibit which medical provider prepared it, and it shall be clearly identified as pertaining to a treating physician, if that is case.</p> <p>(c) Substitution of copies for original exhibits. ALJ may permit a party to withdraw original documents offered in evidence and substitute true copies in lieu thereof.</p> <p>Rule 59 Designation of parts of documents such document is in such bulk or extent as would necessarily encumber record, such document will not be received in evidence, but may be marked for identification, and if properly authenticated, relevant and material parts thereof may be read into record, or if ALJ so directs, a true copy of such matter in proper form shall be received in evidence as an exhibit.</p>	<p>HALLEX I-2-5-22</p> <p>Prepare a medical exhibits folder for each consultative examiner as follows: Use a letter-size folder. On front of folder, write or type claimant's name and Social Security number, and type of CE requested.</p> <p>Make legible copies of material and relevant evidence identified by ALJ as related to type of examination ordered along with most recently completed disability report form. Material that is not relevant to type of examination ordered should not be included.</p> <p>(d)(2) By "complete medical history," we mean records of your medical source(s) covering at least 12 months preceding month in which you file your application. If you say that your disability began less than 12 months before you filed your application, we will develop your complete medical history beginning with month you say your disability began unless we have reason to believe your disability began earlier. If applicable, we will develop your complete medical history for 12-month period prior to (1) month you were last insured for disability insurance benefits (see § 404.130), (2) month ending 7-year period you may have to establish your disability and you are applying for widow's or widower's benefits based on disability or (3) month you attain age 22 and you are applying for child's benefits based on disability</p>	<p>-Both HALLEX and proposed rules ask that material that is relevant but included in a packet of material that is irrelevant to case can be separated and turned in as evidence.</p> <p>Proposed rules specifies that if exhibit is handwritten it needs to be legible or typewritten so it becomes legible. Is this feasible with things such as doctor's notes?</p>

ALJ Proposed Rules (summarized)	Existing Rules and Regulations (summarized)	Differences / Notes
<p>Copies shall be delivered by participant offering same to other parties or their representatives appearing at hearing, who shall be afforded an opportunity to examine entire document and to offer in evidence in like manner other material and relevant portions thereof.</p>		
<p>Rule 60 Stipulations and Representations Parties, or their representatives on their behalf, may by stipulation, or representation, in writing at any stage of proceeding, or orally made at hearing, agree upon any pertinent facts in proceeding. It is desirable that facts be thus agreed upon so far as and whenever practicable. Stipulations, or representations may be received in evidence at a hearing or prior thereto, and when received in evidence, shall be binding on parties thereto. Motions to amend onset dates, closed periods or other changes to allegations contained in original application(s) and any other representation made by claimant or designated representative on behalf of claimant, shall be binding on claimant.</p>		<p>-There is no “stipulations” in current regulations.</p>
<p>Rule 61 Hearings, Access by Public Hearings shall be open to public. However, in unusual circumstances, ALJ may order a hearing or any part thereof closed, where to do so would be in best interests of parties, a witness, public or other affected persons. Any order closing hearing shall set forth reasons for decision. Any objections thereto shall be made a part of record.</p>		<p>-There is no current public access to disability hearings.</p>
<p>Rule 81 Closing Proceeding (a) When there is a hearing, record shall be closed at conclusion of hearing unless ALJ directs otherwise. Before conclusion of hearing any party may petition ALJ for permission to submit evidence after closing of record. Such evidence shall be admitted into record in</p>		

ALJ Proposed Rules (summarized)	Existing Rules and Regulations (summarized)	Differences / Notes
<p>discretion of ALJ upon a showing that such evidence is new and material and could not have been reasonably submitted at or before conclusion of hearing.</p>		
<p>Rule 82 Reopening Proceeding <u>After a decision has been issued, a party may submit additional evidence only by filing a petition to reopen a decision pursuant to [Title 20] sections 404.987 and 416.1587 and following sections.</u></p>	<p>404.987 / 416.1587 http://www.ssa.gov/OP_Home/cfr20/404/404-0987.htm http://ssa.gov/OP_Home/cfr20/416/416-1487.htm Generally, if you are dissatisfied with a determination or decision made in administrative review process, but do not request further review within stated time period, you lose your right to further review and that determination or decision becomes final. However, a determination or a decision made in your case which is otherwise final and binding may be reopened and revised by us. We may reopen a final determination or decision on our own initiative, or you may ask that a final determination or a decision to which you were a party be reopened. In either instance, if we reopen determination or decision, we may revise that determination or decision. Conditions under which we may reopen a previous determination or decision, either on our own initiative or at your request. § 404.989. / 416.1489 http://www.socialsecurity.gov/OP_Home/cfr20/404/404-0989.htm http://www.ssa.gov/OP_Home/cfr20/416/416-1489.htm Good cause for reopening. <u>(a) We will find that there is good cause to reopen a determination or decision if—</u> <u>(1) New and material evidence is furnished;</u> (2) A clerical error in computation or recomputation of benefits was made; or (3) evidence that was considered in making determination or decision clearly shows on its face that an error was made. (b) We will not find good cause to reopen your case if only reason for reopening is a change of legal interpretation or administrative ruling upon which determination or decision was made.</p>	<p>-The difference between two is that with proposed rule a claimant needs to file a petition, with existing regulation a claimant is only responsible for turning in new and material evidence.</p> <p>-HALLEX goes in to detail on jurisdiction of ALJ on reopening a proceeding.</p>

ALJ Proposed Rules (summarized)	Existing Rules and Regulations (summarized)	Differences / Notes
	<p data-bbox="810 302 1625 326">I-2-9-10.ALJ's Jurisdiction to Reopen and Revise a Determination or Decision</p> <p data-bbox="810 371 1394 396">http://www.ssa.gov/OP_Home/hallex/I-02/I-2-9-10.html</p> <p data-bbox="810 407 1598 488">An ALJ, on his or her own initiative, has jurisdiction to consider issue of reopening and revising any prior final determination or ALJ decision under any of following circumstances:</p> <ul data-bbox="810 496 1625 740" style="list-style-type: none"> <li data-bbox="810 496 1499 521">· The claimant did not file a request for review by Appeals Council; <li data-bbox="810 529 1625 610">· The Appeals Council did not review prior ALJ decision and issue an Appeals Council decision either on its own motion or after granting claimant's request for review; <li data-bbox="810 618 1556 675">· The claimant filed a request for review and Appeals Council dismissed request for a reason other than death of claimant; or <li data-bbox="810 683 1625 740">· The claimant filed a request for review, Appeals Council denied request, and 60-day period for filing a civil action has expired. <p data-bbox="810 748 1619 829">If additional evidence is received in connection with a request for reopening, and Appeals Council has jurisdiction to consider reopening issue, forward evidence to:</p> <p data-bbox="810 837 1444 976">Office of Appellate Operations Disability Program Branch _____ [enter branch number] (or Retirement, Survivors Insurance and SSI Branch) 5107 Leesburg Pike Falls Church, VA 22041-3255</p> <p data-bbox="810 984 1619 1065">If additional evidence is received in connection with a request for reopening, and neither ALJ nor Appeals Council have jurisdiction because a civil action is pending before a court, forward evidence to:</p> <p data-bbox="810 1073 1583 1187">Office of Appellate Operations Court Case Preparation and Review Branch ____ [enter branch number] 5107 Leesburg Pike Falls Church, VA 22041-3200</p> <ul data-bbox="810 1195 1619 1365" style="list-style-type: none"> <li data-bbox="810 1195 1619 1276">· The current case before ALJ does not involve an application for benefits but involves some other issue, such as a post-entitlement or post-eligibility issue. <li data-bbox="810 1284 1608 1365">· The Appeals Council or another Social Security Administration component refers a final ALJ decision to an ALJ for consideration of issue of reopening and revision of an ALJ decision. 	

ALJ Proposed Rules (summarized)	Existing Rules and Regulations (summarized)	Differences / Notes
	<p>An ALJ does not have jurisdiction to reopen an Appeals Council decision. Therefore, if an ALJ believes that evidence submitted in connection with a current application establishes that claimant was under a disability during a period previously adjudicated by an Appeals Council decision on a prior application, ALJ must take following actions:</p> <p>If time limit on reopening has expired and reopening is no longer possible: Issue a decision finding claimant disabled as of whatever date evidence establishes, but find entitlement based only on current application.</p> <p>If claimant explicitly requested reopening, explain in decision why reopening is not possible. If claimant did not explicitly request reopening, reopening by Appeals Council is barred by regulations and no useful purpose would be served by addressing reopening issue in decision on current claim.</p> <p>If time limit on reopening has not expired: Issue a decision finding claimant disabled as of day after date of Appeals Council decision, and find entitlement based on current application only. State in decision that Appeals Council decision on prior application is final and binding.</p> <p>On transmittal to effectuating component, state that Appeals Council has jurisdiction to consider issue of reopening its decision on prior application, and ask effectuating component to forward claim file to Appeals Council when they complete their action.</p> <p>Send a memorandum to Executive Director, OAO, Suite 1400, Skyline Tower, 5107 Leesburg Pike, Falls Church, VA 22041 requesting Appeals Council to consider issue of reopening its decision on prior application. Attach copies of ALJ decision and transmittal.</p>	
<p>Rule 84 Decision of ALJ</p> <p>The decision of ALJ shall be based upon whole record of proceeding. It shall be supported by reliable and probative evidence. Such decision shall be in accordance with regulations and rulings of statute or regulation conferring jurisdiction.</p>	<p>404.953 / 416.153</p> <p>http://www.socialsecurity.gov/OP_Home/cfr20/404/404-0953.htm http://www.ssa.gov/OP_Home/cfr20/416/416-1453.htm</p> <p>ALJ shall issue a written decision that gives findings of fact and reasons for decision. ALJ must base decision on preponderance of evidence offered at hearing or otherwise included in record. ALJ shall mail a copy of decision to all parties at their last known address. Appeals Council may also receive a copy of decision.</p> <p>ALJ may enter a fully favorable oral decision based on preponderance of</p>	<p>-Established regulations are much more comprehensive</p>

ALJ Proposed Rules (summarized)	Existing Rules and Regulations (summarized)	Differences / Notes
	<p>evidence into record of hearing proceedings. If ALJ enters a fully favorable oral decision into record of hearing proceedings, ALJ may issue a written decision that incorporates oral decision by reference. ALJ may use this procedure only in those categories of cases that we identify in advance. ALJ may only use this procedure in those cases where ALJ determines that no changes are required in findings of fact or reasons for decision as stated at hearing. If a fully favorable decision is entered into record at hearing, ALJ will also include in record, as an exhibit entered into record at hearing, a document that sets forth key data, findings of fact, and narrative rationale for decision. If decision incorporates by reference findings and reasons stated in an oral decision at hearing, parties shall also be provided, upon written request, a record of oral decision.</p> <p>Although an ALJ will usually make a decision, ALJ may send case to Appeals Council with a recommended decision based on a preponderance of evidence when appropriate. ALJ will mail a copy of recommended decision to parties at their last known addresses and send recommended decision to Appeals Council.</p>	
<p>Rule 85 Appeals</p> <p>The procedures for appeals shall be as provided by statute or regulation under which hearing jurisdiction is conferred. If no provision is made therefor, decision of ALJ shall become final administrative decision of Commissioner.</p>	<p>Hallex 1-2-9-1 20 CFR §§ 404.987- 404.989 and 416.1487- 416.1489</p> <p>http://www.ssa.gov/OP_Home/hallex/I-02/I-2-9-1.html</p> <p>“Claimant,” as used herein, refers to party to initial, reconsidered, or revised determination who has requested a hearing before an ALJ, and any other party to determination, or person whose rights may be adversely affected by a hearing decision.</p> <p>A determination or decision made at any step of administrative review process becomes final and binding if claimant does not appeal timely <i>and</i>, in case of an ALJ decision, Appeals Council does not decide to review decision on its own motion under section 404.969 or 416.1469. If a claimant timely appeals an ALJ decision (i.e., requests review by Appeals Council), ALJ decision will become final and binding if Appeals Council denies request for review and:</p> <ul style="list-style-type: none"> the claimant does not timely file a civil action, or the claimant timely files a civil action and a court affirms ALJ decision. <p>Generally, if Appeals Council grants a claimant's request for review of an ALJ decision, or reviews an ALJ decision on its own motion, Appeals Council will vacate ALJ decision and either remand case to an ALJ for further action, including a new hearing and decision, or issue an Appeals Council decision.</p>	<p>-HALLEX regulations are more detailed than proposed rules on appeals.</p>

ALJ Proposed Rules (summarized)	Existing Rules and Regulations (summarized)	Differences / Notes
	<p>Appeals Council's decision will become final and binding if: the claimant does not timely file a civil action, or the claimant timely files a civil action and a court affirms Appeals Council's decision.</p> <p><u>A claimant may explicitly request an ALJ to reopen and revise a final determination or ALJ decision, or may submit additional evidence or information which implies that claimant is requesting reopening and revision of such determination or decision.</u> An ALJ may grant or deny a claimant's request to reopen and revise a final determination or ALJ decision. ALJ may also decide on his or her own motion to reopen and revise a prior determination or decision.</p> <p>If an ALJ has jurisdiction to reopen and revise a determination or decision and conditions for reopening are met, ALJ must reopen determination or decision.</p>	